



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.1065 of 2020

1. Devanathan
2. Minor Dhivyasree
D/o.S.Devanathan
3. Minor Sananthana
D/o.S.Devanathan
4. Anjalatchi
5. Devaraju

... Appellants

Vs.

- 1.C.Deivasigamani
2. Cholamandalam MS Gen. Ins. Co. Ltd.,
Rashmi Tower, II Floor,
No.1, Village Road,
Nungambakkam, Chennai-34.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the appeal and enhance the compensation in MCOP. No.500/2015 dated 07.02.2020 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Cuddalore.

For Appellant : Mr. Ramya Rao

For Respondents : Mr.J.Michael Visuwanatham R2
R1 – NDW



WEB COPY

JUDGMENT

The first appellant is the husband, the appellants 2 & 3 are the children and the appellants 4 & 5 are parents of the deceased. The claimants not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal.

2. The case of the claimants is that the deceased Rekha was a tailor, aged about 27 years at the time of accident. On 28.12.2014, at about 14.00 hours, when she was proceeding as a pillion rider with her injured minor daughter Sanathana in Hero Honda Splendor Motor Cycle bearing Reg. No.PY 01 BE 3224 driven by her injured husband Devanathan, at that time, the first respondents HGV lorry bearing Reg. No.TN 31 AE 8237 came from the opposite direction in a rash and negligent manner, dashed against the motor cycle, as a result, the first and third appellants sustained injuries and the deceased Rekha sustained fatal injuries and died on the way to hospital. The first respondent is the owner of the lorry and the second respondent is its insurer. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation for a sum of Rs.30,00,000/-



WEB COPY

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the lorry and awarded Rs.12,12,000/- towards compensation for the death of the deceased Rekha under various heads and dismissed the claim as against the parents of the deceased Rekha.

4. The claimants not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

5. The learned counsel for the appellants submitted that the age of the claimant is 27 years at the time of the accident and she was a tailor and she was earning a sum of Rs.12,000/- per month. Without considering the same, the Tribunal has fixed the notional income at Rs.6,000/- which is very meagre. Further, the Tribunal has awarded only Rs.70,000/- towards loss of consortium, loss of estate and funeral



WEB COPY

expenses, which are also too low. The learned counsel further submitted that the appellants 4 & 5 are parents of the deceased and the Tribunal has dismissed the claim as against them. Therefore, this Court may interfere with the impugned award and modify the same.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that due to rash and negligent driving of the driver of the lorry, the accident had happened. The compensation awarded by the Tribunal in favour of the appellant is just and reasonable. Hence, this Court may dismiss the petition.

7. Heard the learned counsel for appellant/claimant and the learned counsel for 2nd respondent.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.



WEB COPY

10. The fact in the present case is not in dispute and the manner of the accident is also not in dispute. For enhancement of compensation, the present appeal has been filed.

11. In the instant case, the deceased was aged about 27 years at the time of the accident and she was a tailor earning a sum of Rs.12,000/- per month. The Tribunal has fixed the notional monthly income at Rs.5,000/- including future prospects since there was no proof regarding the avocation or the monthly income of the deceased. The accident had taken place on 28.12.2014 and the notional monthly income fixed by the Tribunal is very much on the lower side. Considering the age of the deceased, the age of the claimants and also the year in which the accident had taken place, this Court is inclined to fix the notional monthly income at Rs.11,000/-. The age of the deceased was 27 years and therefore, 40% is added towards future prospects. If so, the loss of income /dependency would be:

Monthly Income : Rs. 11,000/-



WEB COPY



Add: Future Prospects : Rs. 4,400/-
40% of Rs.11,000/- -----

Rs. 15,400/-

Annual Income : Rs. 1,84,800/-
(14,400 * 12)

Less : Personal expenses
Rs.1,84,800/- *1/3 : Rs. 61,600/-

Rs. 1,23,200/-

Multiplier : x 17

Loss of income/dependency : Rs.20,94,400/-

12. The Tribunal has fixed only a sum of Rs.70,000/- under the head of loss of consortium. This Court is inclined to fix a sum of Rs.1,20,000/- (Rs.40,000 x 3) under the head of “loss of love and affection”. This Court is inclined to fix a sum of Rs.15,000/- each to the loss of estate and funeral expenses.

13. In the light of the above discussion, this Court modifies the compensation in the following manner:-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of dependency	11,42,400	20,94,400/-



WEB COPY

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Love and affection	70,000/-	1,20,000
Funeral Expenses		15,000
Loss of estate		15,000
Total	12,12,400/-	22,44,400/-

14. The compensation awarded by the Tribunal at Rs.12,12,400/- is enhanced to Rs. 22,44,400/-. The second respondent Insurance company is directed to deposit the entire compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The first appellant is entitled to get the award amount Rs.6,44,400/- and the second and third appellants are entitled to get the award amount of Rs.8,00,000/- each with proportionate interest and costs. The appellants 4 & 5 are the parents of the deceased as they are not coming under the legal heirs. Hence, their claim is rejected.

M.DHANDAPANI.,J

rli



WEB COPY

15. In the result, the Civil Miscellaneous Appeal is allowed in respect of the appellants 1 to 3. Insofar as the appellants 4 & 5 are concerned, the appeal is dismissed. No costs.

26.11.2024

rli

To,
Motor Accidents Claims Tribunal,
Principal District Judge, Cuddalore.

Civil Miscellaneous Appeal No.1065 of 2020

26.11.2024